



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0426; FRL-9955-96-Region 4]

Air Quality Plans; Kentucky; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of the State Implementation Plan (SIP) submission, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on April 26, 2013, for inclusion into the Kentucky SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure SIP submission.” KDAQ certified that the Kentucky SIP contains provisions that ensure the 2010 1-hour SO₂ NAAQS is implemented, enforced, and maintained in Kentucky. EPA has determined that Kentucky’s infrastructure SIP submission, provided to EPA on April 26, 2013, satisfies certain required infrastructure elements for the 2010 1-hour SO₂ NAAQS.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0426. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via electronic mail at notarianni.michele@epa.gov or via telephone at (404) 562-9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA revised the primary SO₂ NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th

percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO₂ NAAQS to EPA no later than June 2, 2013.

EPA is acting upon the SIP submission from Kentucky that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO₂ NAAQS. In a notice of proposed rulemaking (NPRM) published on April 4, 2016 (81 FR 19098), EPA proposed to approve Kentucky's 2010 1-hour SO₂ NAAQS infrastructure SIP submission submitted on April 26, 2013, with the exception of the minor source program requirements of section 110(a)(2)(C) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4). The details of Kentucky's submission and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the NPRM were due on or before May 4, 2016. EPA received an adverse comment on the proposed action. Additionally, EPA acknowledges an erroneous date cited in the Technical Support Document (TSD) to its April 4, 2016, proposal action. For the Kentucky entry in Table 1 of EPA's TSD, "November 23, 2014 (79 FR 65143)" is listed in two places. These two entries should read: "November 3, 2014 (79 FR 65143)".

II. Response to Comments

EPA received an adverse comment on the April 4, 2016, NPRM to approve Kentucky's 2010 1-hour SO₂ NAAQS infrastructure SIP submission intended to meet the CAA requirements for the 2010 1-hour SO₂ NAAQS. A summary of the comment and EPA's response is provided below. The comment is also available in the docket for this final rulemaking action.

Comment: The Commenter stated, "EPA cannot approve the PSD [Prevention of Significant Deterioration] related elements of this Infrastructure SIP until the Jefferson County local air authority has incorporated PM_{2.5} [fine particulate matter] increments into its PSD program."

Response: EPA does not agree with the Commenter's assertion that EPA cannot approve the PSD elements of Kentucky's submittal until the Jefferson County Air Pollution Control District incorporates PM_{2.5} increments into its PSD program. As discussed in the April 4, 2016, NPRM (*see* 81 FR 19104), Kentucky's SIP-approved PSD permitting program for major sources contains required structural PSD requirements, including PM_{2.5} increments. *See* 79 FR 65143, November 3, 2014. Kentucky's rule does not have any exclusion, exception or exemption for individual localities such as Jefferson County, Kentucky. Accordingly, the PSD permitting requirements, including the PM_{2.5} increments, apply in all areas of the Commonwealth, including Jefferson County.

Kentucky has a statutory provision that addresses local air pollution control programs at KRS 224.20-130, *Concurrent jurisdiction with local district – Effect*. This section cross references local programs established under KRS chapter 77, which is the statutory authority for the Jefferson County program. KRS 224.20-130 requires the Energy and Environment Cabinet to approve local programs; provides that local programs cannot be less stringent; provides that,

upon approval, there is concurrent jurisdiction; and provides that this (approval of a local program with concurrent jurisdiction) in no way diminishes the authority of the cabinet to administer and enforce chapter 224 – which is the chapter that comprises and/or authorizes Kentucky’s SIP regulations, including its PSD program. Also, subsection (2) of KRS 224.20-130 allows the cabinet to suspend or revoke approval, or modify the authority granted to a local air pollution control program in Kentucky if the cabinet determines, after public hearing with notice, that a local air pollution control program is not being administered in accordance with the statutes and regulations of the cabinet or the district. Further, subsection (4) states that, “The cabinet shall be empowered to enforce any and all regulations or standards in any district when concurrent jurisdiction is granted.”

Therefore, Kentucky’s PSD program applies to the entire Commonwealth, including Jefferson County, and any deficiencies in the PSD program for Jefferson County would not impact the sufficiency of Kentucky’s SIP for the PSD infrastructure elements.

III. Final Action

With the exception of the minor source program requirements of section 110(a)(2)(C) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is taking final action to approve Kentucky’s infrastructure submission submitted on April 26, 2013, for the 2010 1-hour SO₂ NAAQS for the above described infrastructure SIP requirements. EPA is taking final action to approve Kentucky’s infrastructure SIP submission for the 2010 1-hour SO₂ NAAQS because the submission is consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements and
Sulfur oxides.

Dated: November 21, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S — Kentucky

2. Section 52.920(e) is amended by adding a new entry “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO₂ National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Kentucky Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	**	**	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS	Kentucky	04/26/2013	[Insert date of publication in <u>Federal Register</u>]	With the exception of the minor source program requirements of section 110(a)(2)(C) and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4).

[FR Doc. 2016-29115 Filed: 12/5/2016 8:45 am; Publication Date: 12/6/2016]